

Claim Rejections per Boles per 35 USC §102

The examiner has rejected prior claim 1 per Boles under 35 USC §102. The Applicant's claimed device however has elements yielding function neither taught or suggested by Boles.

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984).

Boles neither teaches, or suggests, having distal ends on the belt that are user-engageable to each other, while having a mid section between the distal ends of the belt that provide the engagement point for the tether at one end. Applicant's arrangement allows the user to easily engage and disengage the distal ends of the support belt from each other since the distal ends are positioned in front of a user and the mid portion is positioned on the back of the wearer. The mid portion provides the attachment point to the tether.

Boles teaches the opposite structure for the opposite purpose. Boles is to restrain a child in a car seat and prevent the child from taking off the belt. For this reason, Boles attaches the tether to engage both distal ends of the belt to hold them together and places the mid section in front to the wearer. Placing the distal ends behind the wearer in this fashion, and securing them both with a hook on the tether, prevents the from disengaging the two distal ends which are

engaged upon a hook on the end of the tether behind the user.

Boles is thus constructed differently, operates differently, and for a different defined purpose - preventing the restrained wearer from removing the belt. Boles lacks a separate means to engage the first distal end to the second and lacks an engagement of the tether to the mid portion of the belt somewhere between the two distal ends. Boles instead secures both distal ends not to each other but to a hook on the rear mounted tether out of reach and sight of the user. Boles thus lacks elements and construction taught by the Applicant and the benefits and utility provided by the Applicant's claimed device which supports users leaning in a chair and allows movement between a plurality of chairs adapted to engage the tether.

Still further, it is submitted that claim 1 teaches a difference in a chair restraint that represents a novel arrangement which provides useful characteristics over the cited prior art. It is therefor submitted that applicants invention is in the form of a meritorious improvement in the art which even if it is considered simple, it is not anticipated by the prior art, nor is it believed to be fairly suggested by the cited references.

It is believed that it has been established that one should not be deprived of patent protection where it can be shown that a genuine improvement has been made, on comparison with other intentions in the art, even if the improvement lacks the

appearance of a great advance in the art.

In re Lange, 128 USPQ 365, the CCPA on page 367 states that:

"We think that the present application is a distinct improvement of Jezalik and represents an advance in the art not obvious, having patentable novelty. The art is a crowded and comparatively simple on and in such an art, great advances are not to be expected. However patentability will not be denied to an invention which accomplishes a small, but nevertheless genuine improvement not thought of by others.."

Applicant believes claim 1 to be a substantial improvement in prior art however even if it were to be considered a simple advance, such would still be patentable.

Claim Rejections under 35 USC §103

The examiner has further rejected subordinate claims 2 and 13 per boles in view of Marino. As noted above, claim one should be allowable and consequently claims subordinate to claim 1 should also be allowable since any combination involving claim 1 will fail.

Marino, is cited for the proposition of supplying an elbow support to the elements of Boles. Rather than being an elbow support, Marino teaches the use of an arm restraint strap (50) to encircle the arm of a user and hold the upper arm next to the body. (Figure 4). Marino neither teaches or suggests providing a support on which to rest an elbow to provide support to the user who can freely move their forearm and hand when so resting. Marino teaches just the opposite. Figure 4 of Marino shows the true intent of Marino showing the upper arm encircled by a the

restraint strap (50) to restrain the arm. Nothing in either Marino, or Boles teaches or suggests the combination taught by the Examiner or the desirability of doing so.

Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co., 730 F.2d 1452, 1462,221 USPQ 481,488 (Fed. Cir. 1984).

Since Boles teaches against applicant's claimed device and Marino teaches against providing a support surface on which to rest an unrestrained elbow and arm, there is no desirability of making the suggested combination which must fail.

BOLES IN VIEW OF RUFF

Claim 3 has been rejected based on Boles in view of Ruff. As noted, Boles fails to teach or suggest the elements and function of applicant's device and any combination of Ruff would fail.

Further, inertia wheels as taught in Ruff are not a means to bias the tether toward the rear of the chair as inertia wheels lock-up and prevent unwinding if the wearer moves too fast and inherently have very little resistance when not locked up to allow ease of movement unless the vehicle suddenly stops or the wheel is mechanically locked. This is unlike an actual biasing means to hold the user in an angled position in the chair and allow easy movement.

Still further, the stated intent of Boles is to allow the child the ability to fidget and stand up and look out the window

and a continual rearward bias on the tether would inhibit such activity since it would continually pull the child down when he stands up.

The objection is respectfully traversed since Boles lacks elements of applicants device, teaches against biasing the belt rearward, and since a lock up wheel of Ruff will not work to pull the angled user rearward especially if the user moves to quickly and locks it up.

Claim 4 is also rejected by the Examiner's combination of Boles in view of Ruff and combining them with Marino. As noted above Boles lacks elements of Applicant's device and any combination will thus fail. Also above, Boles and Ruff do not combine to yield applicant's device so a combination with Marino would also fail.

Still further, the Examiner may have strayed into a hindsight analysis with the benefit of knowing applicant's device in advance of the review for obviousness.

"When prior art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself." Interconnect Planning Corp. 774 F.2d at 1143, 227 USPQ at 551. See also Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986). Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co., 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984).

Nowhere in the prior art cited by the Examiner does it teach or suggest the combination of claimed the elements of applicants' device. Further, Boles and arguably Ruff teach away from applicant's device and would appear to be a combination arrived at using applicant's application as a teaching guide. As such the objection to the claims per section 103 is respectfully traversed.

BOLES IN VIEW OF NUNN

The Examiner cites the combination of Boles in view of Nunn in rejecting claim 5. As noted above, Boles fails to teach the elements of Applicant's claimed device. The combination with Nunn must too fail.

Further, Nunn does not teach or claim a belt having distal ends securable to each other and a tether securable to a mid section. Instead, Nunn teaches a belt with permanently secured ends, affixed to each other. Further the tether of Nunn is one piece and does not disconnecting the first half of the tether from the second. (Column 2 lines 1-12, and Figure 5). As such this combination must fail.

BOLES IN VIEW OF NUNN IN VIEW OF MARINO

The Examiner combines Boles in view of Nunn and Marino in rejecting claim 7. As noted above Boles lacks elements of Applicant's device, and the combination of Boles and Nunn fails to teach or suggest the combination to yield applicant's device.

Consequently combining Marino with them will not yield claim 7.

The Examiner indicates it would be obvious to add these other elements in Nunn despite of the fact that no reference teaches the combination or any reason for it and the first two references lack elements of applicant's device.

"When prior art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself." Interconnect Planning Corp. 774 F.2d at 1143, 227 USPQ at 551. See also Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986). Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick Co., 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed. Cir. 1984).

The Examiner may have strayed into a hindsight analysis with the benefit of knowing applicant's device in advance of the review for obviousness. As noted above such a hindsight analysis must not occur. Nowhere in the prior art cited by the Examiner does it teach or suggest the combination of claimed the elements of applicants' device. As noted above, two of the references teach away from applicant's device. As such the objection to the claims per section 103 is respectfully traversed.

BOLES IN VIEW OF RUFF IN VIEW OF NUNN

The examiner rejected claim 8 in view of Boles, Ruff, and Nunn combined. As noted above, Boles lacks elements of applicant's device as does Nunn both of which teach against

applicant's device. Boles is thus patentable on its own as would be all subordinate claims such as claim 8.

A combination with Ruff must ultimately fail since the base claim is patentable.

The same can be said of the additional inclusion of Marino with Boles, Ruff, and Nunn as to claim 9. Combining four different references to yield the device strays into the venue of the hindsight analysis noted above. Further, since claim 1 and intervening subordinate claims are shown to be Patentable this objection is traversed.

BOLES IN VIEW OF GIANCASPRO

The objection per Boles in View of Giancaspro is also respectfully traversed. Boles has been shown to be patentable so all subordinate claims would too be patentable.

Nowhere does Boles suggest the addition of shoulder straps between the distal ends and the mid portion of the belt. Giancaspro teaches a device to support slipping children when learning to ice skate and teaches the use of a harness for standing and skating not for back support sitting in a chair. The combination suggested by the Examiner is thus neither taught or suggested in the prior art and not a proper combination per Lindemann noted above. The same can be said of the combination of Boles, Giancaspro, and Marino.

CONCLUSION

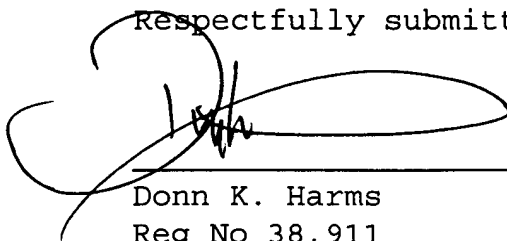
Because the base claim has been shown to be patentable, the depending claims should also be patentable.

Further, the combinations suggested by the Examiner have been respectfully traversed.

Finally, applicant's invention is novel, unanticipated, and a meritorious improvement in the art. Even if considered simple, it has not been anticipated by the prior art, nor is it believed to be fairly suggested by the cited references, and argues for, rather than against patentability.

Should the Examiner have any further questions or concerns the Examiner wishes to address by Examiner's amendment by telephone or otherwise, or should the Examiner have suggestions to more clearly define the subject matter of the claims to more clearly define the patentable subject matter, the Applicant's attorney would be most receptive to such.

Respectfully submitted,



Donn K. Harms
Reg No 38,911
Attorney for Applicant

12702 Via Cortina, Ste. 100
Del Mar, CA 9014
Tel: (858) 509-1400
Fax: (858) 509-1677

IN THE DRAWINGS

The Examiner has indicated that the means to bias the tether toward the rear of the chair is not shown or described. The Examiner may have missed the description on page 24 of the application lines 15-24 where flexible support (46) is described and is shown in figure 8.

A replacement drawing is herewith submitted to show the line on numeral 42 in figure 3.

CLAIM NUMBERING

Applicant inadvertently misnumbered the claims at 19 and at 21. The claims have been renumbered to reflect the 25 total original claims. Claims with amended numbers have been marked as currently amended since they have been changed.

SECTION 112 OBJECTION

The objection to claims 3,4,8 and 9 is respectfully traversed. As noted above the specification provides the description on page 24 of the application lines 15-24 of the means to bias the tether in the form of flexible support (46) which is described and is shown in figure 8.